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M E X I C O

SECRETARIA DE RELACIONES EXTERIORES

Statement of the Rights and Just Reasons
on the part of the government of the
United Mexican States

1852

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The following statement has been officially circulated and distributed to the Members of the Diplomatic Corps, with the accompanying note.

Foreign Office, National Palace, Mexico, March 1852.

THE undersigned Minister for Foreign Affairs, has the honor to enclose to H. E., &c. &c., copies of the Statement which, by order of H.E. the President he has drawn up, of the origin and actual state of the privilege granted to D. José Garay for opening a line of communication between the Atlantic and Pacific seas, through the Isthmus of Tehuantepec.

The object proposed by it, is to make manifest to friendly powers, the injustice of the charges brought against the Mexican Government, accusing it of nonfulfilment of its engagements. A simple statement of facts, based on the acts of the accusers themselves, will prove that there is no right for demanding what is claimed, although the Government is at the same time ready frankly to cede, whatever can be ceded without compromising the fate or dignity of the Nation. Mexico, although struggling with misfortune and poverty, seeks not gain, it desires only to save its credit and honor.

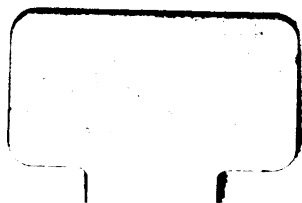
Animated by these sentiments, which will without doubt be well received by Your Excellency; the undersigned hopes that by placing them in a favorable view to his Government, as he begs him to do, Mexico will reach that high and noble end aimed at.

The undersigned, &c. &c.,

JOSE F. RAMIREZ.

STATEMENT.

THE parties interested in opening the communication between the Atlantic and Pacific oceans through the Isthmus of Tehuantepec, have for the last year constantly occupied the public attention, urging the justice of their privileges, and at the same time entering into operations, which, by creating new interests, gave grounds for involving their government in disputes which purely concerned themselves as private individuals. If in their proceedings they had merely confined themselves to legal and rational means, their attempts, however unfounded, might have been treated with indulgence; but unhappily for their cause, they have covered themselves with discredit, by resorting to fraud and chicanery, endeavoring to place the Government of Mexico before the eyes of the world as wanting in good faith and common justice. No efforts have been left untried to place Mexico in a false position, by false or garbled statements, discussions, addresses, manifestoes, protests, threats and a thousand other intrigues, powerfully disseminated by an active and partial press, nothing has been omitted to give an undue bias to public opinion. Unhappily, a republic suffering from disturbances within,



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STATEMENT
OF THE
RIGHTS AND JUST REASONS

ON THE PART OF
**THE GOVERNMENT OF THE
UNITED MEXICAN STATES**

FOR NOT RECOGNIZING
EITHER THE SUBSISTENCE OF THE PRIVILEGE GRANTED TO
D. JOSE GARAY,
FOR THE OPENING OF A LINE OF COMMUNICATION
BETWEEN THE ATLANTIC AND PACIFIC SEAS,
THROUGH THE ISTHMUS OF TEHUANTEPEC,
OR THE LEGALITY OF THE CESSION WHICH HE MADE OF SAID PRIVILEGE TO
CITIZENS OF THE
UNITED STATES OF NORTH AMERICA.

PUBLISHED BY AUTHORITY OF THE
MINISTER FOR FOREIGN AFFAIRS.

MEXICO:
PRINTED BY O'SULLIVAN AND NOLAN.
1852

THE
HISTORY OF THE
CITY OF BOSTON

FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME

BY
JOSEPH NEALE

IN TWO VOLUMES.

LONDON:
PRINTED BY J. JOHNSON, ST. PAUL'S CHURCH-YARD.

1805.

THE HISTORY OF THE
CITY OF BOSTON

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Exteriores

STATEMENT

OF THE

RIGHTS AND JUST REASONS

ON THE PART OF

**THE GOVERNMENT OF THE
UNITED MEXICAN STATES.**

FOR NOT RECOGNIZING

EITHER THE SUBSISTENCE OF THE PRIVILEGE GRANTED TO

D. JOSE GARAY,

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THROUGH THE ISTHMUS OF TEHUANTEPEC,

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1852.

also equally the case if the Congress had disapproved the concession itself: for he (Garay,) knew that when he applied for another year that the concession was exposed to this risk. The twenty eight months of the first concession expired on the 1st July, 1844, and the prorogation of one year, which Garay obtained by the decree of 28th December, 1843, terminated on 1st July, 1845, and expired without his having fulfilled its conditions, as ten days before the fatal termination, that is on the 20th June, he requested a further term with more ample privileges. The Government on the 14th of the same month, passed his petition to the Council of State, which reported favorable on the 25th, but observed, "that the concession and its amplifications had been granted by the Provisional Government in the exercise of its discretionary powers, and that the acts proceeding therefrom, ought to be subject to the approval of Congress," they declined granting the prorogation and privileges asked for, and passed the matter to the Chamber of Deputies, in accordance with the decree of 1st April, 1845. The Chamber guided by the report of the second commission of Finance, granted the prorogation and some of the privileges asked for. The resolution passed to the Senate, and although its committee reported favorably, and their opinion was read on the 27th, the affair remained in "statu quo," that is to say, without having been passed by the legislature, owing to the interruption caused by political circumstances. On the dissolution of Congress by these events, a Provisional Government was established upon the bases agreed on by the general act of the army, 2nd January, 1846, implicitly sanctioned by the Extraordinary Congress which was installed on the 6th June following.

The fourth article of the said "act," defined the powers

of the Government in the following terms: "The powers of the acting President, are those already granted by the existing laws, and he can only exceed them for the purpose of preparing for the defence of the National Territory, always respecting the guarantees established by the said laws." The defence here alluded to, was the one in preparation to resist the war then menaced by the United States, the only case in which the exercise of any extra power was anticipated. The Congress Extraordinary confirmed this principle by its decree of 10th June, declaring, "that the ordinary powers of the Provisional Executive Government, were those which the *Bases Organicas* and other laws and decrees then in force, conferred on the President of the Republic."

Nevertheless, the said decree imposed some restrictions on these same ordinary powers, and with respect to the extraordinary ones, it provided in the 7th article, that the Congress would assign to the Provisional Executive the extraordinary powers which the defence and welfare of the Republic might require.

A fresh political emergency produced another change in the administration on the 4th August, of the same year, and the "Acta of the Citadel," in which were included the bases of its organization, contain the following in its third article: "Until the Sovereign Congress meets and decrees what may be necessary for the war, it shall be the sole duty of the Executive, to dictate all the urgent and necessary measures, for sustaining with decorum the National Flag, and fulfil this sacred duty without a moment's loss of time." This is the only measure there found defining the faculties of the Provisional Government, indeed no more than a repetition of the 4th article of the "Acta" of the 2nd January. The extraordinary, or extra-constitutional powers, could only

be extended to the defence of the country, in the war then commenced with the United States. This was confirmed by the Provisional Government, at the head of which was General D. Mariano Salas, by a decree of the 22nd August, published eighteen days after the date thereof, reestablishing the legal and constitutional order of things. The first article of said decree runs thus: "Until the new constitution be published, that of 1824 shall be in force, in every point that is not opposed to the plan proclaimed in the Citadel of this Capital in the present month, in so far as the disturbed position of the Republic permits." By this it will be seen that the political change was only in determining *the Constitution that ought to rule*, substituting the Federal one which actually subsists in place of the "*Bases Organicas*" restored by General Paredes.

In this change, the powers to be exercised by General Salas as Provisional Head of the Government, were clearly defined, and being those defined by the Federal Constitution of 1824, they restricted him in every point unconnected with the war and with the defence of the country. These things must be kept in view, in order fully to understand the question. With a full knowledge of these facts, and of the political state of the country, Garay renewed his pretensions in a petition to Government, two months after the decree of the 28th October. The contents of this petition are sufficiently important to fix the character of subsequent events, and it will be well to review them. Garay, after making a short sketch of the steps taken for obtaining the prorogation of two years, which he had asked for on the 20th June, 1845 (ten days before the expiration of the term), and shewing that the resolution of Congress had remained pending on account of political events, used the following remarkable

words: "I doubt not that the Congress will take into consideration this important business, and that the resolution of the Chamber of Deputies will be adopted, but in the meantime, according to communications I have received by the last packet, from my aforesaid brother José Garay, certain measures within the power of the Executive, can and ought to aid powerfully in the execution of the work of connecting the two seas, and they will produce in any case, results of undoubted utility to the Nation, and in order that the Government may decree them, I address the present explanation." This language in the mouth of the party interested, leaves no doubt of his conviction that the Congress alone had the faculty and power of conceding the prorogation he had petitioned for the year before, and he limited himself therefore, on the present occasion, to solicit such measures or privileges which could be granted by the Executive. These were limited to the permission for introducing Colonists into the Territory conceded, reposition of lands belonging to private individuals, and freedom from duty on importation of provisions and instruments destined for the use of the Colonists through Coatzacoalcas, as also on the exportation of their fruits and produce. The agent of Garay concludes, remarking, that like concessions had been made by the Government in favor of other enterprises for colonization, as though to impress more deeply the idea already expressed, that he was then only asking for provisional measures, and those which could be granted by the Executive, leaving the principal one, that of the prorogation of time, to the resolution of the next Congress.

Great undertakings are the most imperishable monuments of fame, and so great is the desire of accomplishing them that men are frequently led astray by it. It so

happened to the then Government. Carried away by the grandeur of the scheme, they not only exceeded the demands, but perhaps even the expectations of Garay. They conceded to him all that their most ample powers permitted, even to what he himself had left to be obtained from Congress and must emanate from the Executive power, namely, the prorogation of two years from 1st July, 1845. General Salas granted this prorogation by his decree of 5th November, 1846, counting the time from that date, extending it for sixteen months more, and ratifying the other prorogations, with fresh and greater privileges, with, however, one important modification which we shall refer to presently. On this decree rests the whole affair; it is that invoked by Garay and his successors, it forms in short, the germ of the disputes and differences which have subsequently arisen. Garay's agent, shielded by this title, went to the Government on the 21st of the same month, asking for the necessary credentials to enable him to treat with the settlers, on whom the possession was to be conferred of the lands which it was decreed to colonise. These credentials were given on the 23rd, with the expressed condition that Government was to be informed of all the contracts entered into, in order to carry into effect the articles 13th and 14th of the decree of the same month. These articles are as follows: 13th article,—“It shall be an express condition in the contracts, *that the Colonists are to renounce their nationality* during their residence in the country, and subject themselves to the Rules established for Colonization, in so far as they are not opposed to this law.” Article 14th.—“The Contractor shall remit for the approval of the Government, all contracts entered into for the introduction of Families and Laborers, and keep a public and authorized register of all the transactions connected with the colo-

"nization." It has been seen that the Credentials or Patent applied for by Garay, were issued on the 23rd November, 1846, and the decree authorizing the prorogation of the same, on the 5th; consequently it was to be supposed, that on these new titles his ulterior proceedings would be based, because those previously acquired had lapsed. But so far from this being the case, he had actually since the 21st of the previous August, made over in London to Messrs. John Schneider and Co., of that city, and Manning and Mackintosh of Mexico, the lands of the concession and the privileges, as yet not granted him, but for which he intended to apply.

The business had completely changed its character, becoming one of mere mercantile speculation, Garay acting as the Broker. The informalities of its origin, were patched up on the 7th January, 1847, by a public document between Garay and Mackintosh before a Notary Public of this city. This document which forms the second link in the chain, which connects this unfortunate business with the New Orleans Company, is of the greatest importance and demands the most careful attention.

It has been already observed, that Garay made over to Schneider and Mackintosh the concession, in virtue of a contract entered into in London, 21st August, 1846, that is, two months and a half before the illegal prorogation granted him by General Salas. Of this Contract the Government have never been able to procure a sight, in spite of repeated applications; on it, however, was based the legal instrument of the 7th January, 1847, in the first clause of which, Garay declared, "That he cedes and "makes over to Messrs. Manning and Mackintosh, and "Messrs. John Schneider and Co., all his rights, &c., &c., "for ever, to them, and to the Colonists, to whom they

“might sell the lands comprized between the limits fixed,
“as drawn by a straight line, which shall cross the River
“of Coatzacoalcos, at its confluence with the River Mala-
“tenango, and which shall be carried up to the mouth of
“the first, with an extension of ten leagues on each side
“of the course of the aforesaid river of Coatzacoalcos.”
The clauses Nos. 2, 3 and 4 are not important, as they
only treat of the colonization, and provide against diffi-
culties which may arise from want of lands. In the
5th, which is of great importance, the contract says,
“That by this cession which Garay makes, it is not to be
“understood that he gives to Messrs. Manning and Mac-
“kintosh, and Schneider and Co., any right to form a
“navigation from one sea to the other, but that he con-
“cedes to said parties, the right of navigating the River
“Coatzacoalcos, whenever it may be necessary to the
“interests connected with the cession of the lands there-
“in treated of, without by so doing infringing on the
“privileges of Garay. That in virtue of this reservation,
“Garay, and the Company that may be formed, shall
“have the right of taking or using any materials on the
“lands ceded, which may be required for the construction
“and continuation of the line of communication between
“the two seas.” The ninth clause provides, “That when-
“ever the opportunity offers for treating of the construc-
“tion of the said line, Garay, and Messrs. Manning and
“Mackintosh, and Schneider and Co., shall come to an
“understanding about forming a company, for carrying
“into execution said work, and if they should not agree,
“Garay shall be at liberty to make an arrangement with
“any other persons or company. That with this under-
“standing, he cedes the full, perpetual and irrevocable
“possession of the lands, ten leagues on each side, to said
“parties, as by the stipulations laid down, without being

"in any way connected *with the construction of the line of communication.*"

The other articles are not material; but the one in which he confers the right of ceding and making over the lands to other parties, contains the proviso, that in order to do so, they must inform Garay, on account of legal forms required, and of his having to advise the Mexican Government *whenever new Colonists are introduced.*

Here we have the famous contract of alienation, which, though grafting foreign interests on an undertaking which originally presented itself as a purely national one, nevertheless solely and exclusively comprehended colonization, and in no way, the opening of the line of communication; that, Garay reserved to himself, and even the colonization was understood to be permitted only under the provisions of the law, which laid down the express condition, that the Colonists were to renounce their nationality and the Government to be previously advised of their introduction.

These are points which must be earnestly borne in mind. The Law, and the Title itself, imposed on Garay the duty of informing the Government of every contract entered into, and he did not do so with respect to the one in question, until the 14th May. In the communication which he addressed to Government, after referring to the trouble and difficulty he had experienced in bringing the business to its then shape (which only amounted to his selling part of his privilege), he says, "I succeeded with this intention (colonization) in making a contract (independent of the line of communication between the two seas) with the houses of Manning & Mackintosh, and Schneider & Co., by which these parties engage to introduce Colonists into the lands, &c." It is thus proved by this passage, that Garay still insisted on reserving his rights, guar-

anted him by the contract of 7th January, and that he recognized the obligation of informing the Government and procuring its approval; and in order to interest the Government and make it see the advantage of colonizing by English Speculators, he adds in the same dispatch, "that the Americans had already fixed a *greedy eye* on those lands, as was apparent from the observations of their press." The Government gave their approval to this contract, but with certain modifications, contained in the note addressed to the Office of Foreign Affairs, dated 9th July, requiring that the conditions of the contract of the 7th July, should be reformed in strict accordance with said modifications. Garay consented to this arrangement, and conjointly with the agent of Manning and Schneider, signed a new contract in this city, under date of the 21st July of the same year, inserting in it the precise words of the aforesaid note, from the Foreign Office; they, Schneider and Mackintosh, expressing themselves willing to submit to its conditions. The note says, "His Excellency the President has read the articles of this Contract, and keeping in view the antecedents of the case, has been pleased to approve the same; but with additions that have been considered prudent and just, to supply omissions noted in said contract, omissions which might give rise to misapprehension, and which it is right to provide against. In this contract no mention is made of the renunciation of Nationality, as required by the thirteenth article of the law of the 5th November, 1846. This renunciation, according to that law, should be made by the Colonists in the most express and distinct manner, so that whatever might occur, on no account whatsoever, or under whatever pretext, could the Colonists or the Proprietors demand foreign protection, nor any other rights but those allowed by the

“laws of the country, to which they are subject, both in
“person and property. This was the precise requisite for
“their admission as Colonists. Neither in the contract is
“it mentioned, that the grantees have the obligation to
“inform the Government of the Contracts they may make
“for the introduction of Families, nor of the Register to
“be kept according to the 14th article of the aforesaid
“law of the 5th November. All these relative obliga-
“tions binding on the grantees, ought to be enforced in
“any transfer, and consequently to avoid future disputes
“and misunderstanding, it must be expressed that the
“*grantees* do not make over to the houses of Manning
“and Mackintosh, of Mexico, and Schneider and Co., of
“London, in their contract (the approval of which is soli-
“cited,) any other privileges than those granted in the
“original concession. His Excellency has ordered that
“the contract with the foregoing explanations be remitted
“to him through this office under my charge, &c., all
“of which I communicate to you for your information, and
“in answer to your application of the 14th May of this
“year.”

Thus we see that however or to whomsoever disposed of, there were restrictions and conditions imposed on the original grantee, Garay.

Eighteen months passed after the communication of this dispatch, without any notice having been taken of it. This unaccountable silence was only broken by the note which Garay addressed to the Government on the 18th July, 1848, remitting the legally authorized copy of the contract above alluded to, and which ought to have been done the day after it was signed. With such antecedents, it will be understood how great was the surprise of the Government when on the 13th January, 1849, they received a note from Manning and Mackintosh stating

that "D. Jose Garay had ceded to their house, the privilege of constructing a line of communication between the two seas, via the Isthmus of Tehuantepec, which privilege had been granted him by the Provisional Government on the 1st March, 1842." This was the first notice the Government had of such cession or alienation; and knowing that Garay had reserved said privilege expressly for himself, that he had only ceded his right as far as colonization was concerned, and that for so strange a proceeding as an absolute alienation, no permission had been granted him, Government replied to Mackintosh, that it could not recognize him as a grantee of Garay, and moreover that as the two years allowed for the prorogation by the decree of the 5th November, 1846, had expired, it considered the privilege as having ceased. Mackintosh at once protested against this view of the case, as well as against the intention of Government from the beginning, of submitting the final decision of the grant to the deliberation of Congress. Upon these points, as a business belonging to it, a long correspondence arose, and during six months Mackintosh addressed note upon note to Government defending his rights, until despairing of overcoming their resistance, he notified to them on the 25th July of the same year, 1849, "that he was going to inform his partners out of the Republic, of all that had occurred with respect to this business; that their residence was in the United States; that the company was represented by D. Pedro Amadeo Hargous, who, for the future, would understand with the Government of the Republic, as he, Mackintosh, had ceased to be their representative."

Thus terminated the correspondence between the Government and the Speculators, the conclusion being perfectly in harmony with all the former indecorous proceed-

ings. Two years and four months had been assigned to Garay by the decree of 1st March, 1842, for carrying into effect the opening of the line of communication; and yet, by dint of repeated prorogations, he had contrived to extend the time to nearly seven years, without having commenced the work. When at last he saw the risk of losing his privilege, he clandestinely made it over, or pretended to make it over, to British subjects, hoping that the power of that Government would be extended to them, or that probably Mexico, annihilated by an expensive war, would humble herself to England. The Mexican Government, however, resisted, and that of Her Britannic Majesty remained indifferent. What then was to done? Appeal was to be made to a similar measure of the same nature; the privilege was made over, or pretended to be made over, also clandestinely, to citizens of the nation that had just laid down the law to Mexico, and who but the year before were masters of its capital. This conduct, both offensive and illegal, had for its design the object of obtaining from Mexico by fear, what its justice denied, and the hope that the Government of the United States could be induced to complete the work by force.

In this way the peace and welfare of two nations were to be sacrificed to the interests of a cold blooded mercantile speculation, and in this way, on the desk of a trader, were to be cancelled the sacred bonds of a Treaty of peace and amity which had so lately been contracted. This conduct was not calculated to create good-will nor inspire confidence; for if, while the final settlement was still pending, no regard was shown to the clearest provisions, and all conditions were trampled upon, what was to be expected when the cession was transferred to a Foreign Country? Nothing but further outrage, and the

risk of a collision with a powerful and friendly nation. It was the bounden duty of Government to avoid this risk, and if with this view it submitted the affair to the resolution of Congress, it was further in pursuance of the very decree to which Garay himself submitted on obtaining his grant, as we have already somewhat minutely proved, it was further the duty of the Government to submit the question to Congress, as the transfer of his rights to the house of Manning and Mackintosh, and of this to American Citizens, were null and illegal, the former without the consent of Government, and the latter not only against its consent, but against its decorum and dignity. In short, even admitting the illegal prorogation of 28th December, 1843, and the still more flagrant one of 5th November, 1846, the transfer made to American Citizens would be void, as it was made after such privilege (*ipse facto*) had ceased.

Such were the incontrovertible arguments which induced Congress to publish the following decree, under date of the 2nd May, 1851. "The decree of the 5th November, 1846, is declared null and insubsistent, as the powers with which the Provisional Government of that period were invested, were insufficient to dictate it. The Government declare that the preceding declaration be observed in all its parts respecting the privilege granted to D. José Garay."

This is the famous decree which has given rise to the violent and unjust aspersions against Mexico, accusing her of perfidy, bad faith and odious proceedings. We admit that there may be persons who judge thus, probably from being imperfectly informed of the merits of the case, possibly hearing only the statement of those whose interest it is to paint the subject according to their own views; but we trust on dispassionately viewing the facts as here laid

down, they will come to a more just conclusion. God forbid that a work so calculated for the benefit of the world at large, should, by mixing up with it petty interests, be frustrated! or that an undertaking so great in its conception, should breed ill will between two great Sister Republics! All the objections to the decree of the 22nd May, 1851, may be reduced to the following; we appeal for their solution to the tribunal of reason and common sense, a *lex communis* applicable not only to Mexico, but elsewhere. To the declaration of the Government that the grant to Garay was illegal, and if, for the sake of argument, it were legal, that limit had expired; Manning and Mackintosh replied, "that neither they nor Garay were bound to procure the consent of the Government, and even admitting that such obligation existed, it had been fulfilled, as Government had been duly advised of the transfer; that the privilege had not ceased, but admitting that it had, that it belonged exclusively to the Judicial Power so to determine, and not to the Congress, before which the Government proposed to refer it." This is their defence; now for the reply: the decree of 1st March, 1842, granting to Garay the original privilege, is worded in a formula unusually singular in this class of documents. The magnitude and importance of the business indeed required it, and it cannot be said that the law is either obscure or defective.

Indeed, the opening of a line of communication between the Atlantic and Pacific seas, through the Isthmus of Tehuantepec; that is to say, crossing the Territory of the Republic, was an undertaking which demanded great precaution and circumspection, because it could not be carried into effect without the assistance and resources of foreigners. Mexico was then at war with the colony of Texas, formed, as is well known, of foreigners, who after-

wards usurped the soil, and it was feared that an imprudent emigration might increase the troubles of Mexico, by attracting foreigners into the heart of the country. Such difficulties could only be avoided by making the undertaking not an ordinary and private one, but investing it with a National character, throwing over it the protection of Government, and subjecting it to its control. To do this, it was requisite to intrust its management to an individual in whom the Government had every confidence, as the powers of that individual were almost of a sovereign character, granting the privilege of constructing forts in the ports, &c. All these conditions are explicitly defined in the aforesaid decree of the 1st March, not using the ordinary language of permission.

The first article says, "a line of communication shall be opened between the Pacific and Atlantic, across the Isthmus of Tehuantepec," &c. Fourth, "the execution of this work is *intrusted* to D. José Garay, to whom is *conceded* the exclusive right of the same. His obligations, remuneration, &c., will be those as expressed," &c. The meaning of these articles is clear and precise; it draws a distinction between the person of D. José Garay and his obligations and rights. Garay is an agent to the Government, and as such the prosecutor of the work. His charge is one of confidence, and one of that class in which the qualities of persons are looked at. Garay is also a speculator, and as such undertakes to open a line of communication jointly with the Government. The latter introduces as capital, its lands, its protection and three hundred convicts to work on the line; the former finds the funds for the opening and management of the company. The profits, or the produce, are to be divided between both in the terms laid down on the 1st March, which is, as may be said, the Instrument of the Partner-

ship. Garay, then, is the directing partner of the Company, his identity being there defined and laid down. Can it thus for a moment be said, either in conscience or reason, that Garay, the confidential agent of the Government, and manager of the Company, could transfer both the agency and direction to foreigners, and that, not only without the consent, but against the express will of his superiors and partner? The absurdity of such a pretension needs no confutation; and, in fact, Garay, by the mere act of having alienated to foreigners his powers, with grave offence to Government, and in contravention of the spirit and letter of the law, destroying his title and vitiating the rights conferred upon him. Garay could dispose of the lands conceded to him, because Government granted to him that privilege; they individually belonged to him whilst in the service of the Government; but he could not dispose of the agency or the direction of the work, because it was an office of trust, and in doing so he has incurred a heavy responsibility, disobeying at the same time the Government and breaking the laws of his country.

The house of Manning and Mackintosh, to weaken these grave charges, assert that the Government was beforehand aware of the cession made by Garay. This is a mere fallacy, destitute of reason, and confirms the shallowness of their pretensions. It is founded on a passage of a note of 6th September, 1847, addressed, by the Commissioners for making the treaty of peace with the United States, to Mr Nicholas Trist, and runs thus: "In the eighth article of your Excellency's project, the concession of a free passage through the Isthmus of Tehuantepec to the South Sea, is solicited in favor of American citizens; we have verbally informed your Excellency that some years ago this privilege was conceded to a

“private speculator, and has been subsequently made over by the authority of the same Government to *British subjects, of whose rights Mexico cannot dispose.*”

From the phrase in italics, the house of Manning and Mackintosh, in its manifesto, concludes that the Mexican Government authorized and considered as firm and valid the transfer which Garay made of the privilege for opening the line of communication through the Isthmus of Tehuantepec. This deduction is entirely unfounded, because the antecedents do not authorize it, and because, as will be seen, it rests upon an unpardonable anachronism. The first question that presents itself against such a line of argument is, at what time before the date of that note, (6th September), had Garay, or the representative of Mackintosh, obtained the previous consent of the Government, in order with exactness to say that from the phrases contained in that note, it had authorized and considered as firm and valid the transfer which the first had made to the second? There is no proof whatever that they had asked for such permission; and although this line of argument undeniably proves that they had not done so, they may still be convicted of falsehood by their own acts. Here is the demonstration: Garay transferred to the house of Manning, the right of colonization on the 7th January, 1847, and in the contract it says, that this is not to be understood as conferring any right for forming the communication from one sea to the other. Garay himself, applied, on the 14th May of the same year, to the Government, for its approval of said contract, observing that it was independent of the privilege of the interoceanic communication; which contract, on the 17th July following, the Government approved with the conditions which have been already alluded to, one of them being that it be solemnized by legal instrument, and a copy of it sent to the Foreign Office.

Fifty days afterwards, the American army invested the capital; and in the discussions for peace which took place, the commissioners for Government made use of expressions which are now brought forward as a proof of the approval which the Government had given to the cession made by Garay to the house of Manning and Mackintosh.

The deduction is therefore absolutely unfounded: for although the cession did exist, in what did it consist? Certainly only as far as regarded the colonization of the lands; this was the only one which was known to the Government, and that to which in the note recited the commissioners referred.

They merely stated a fact, true to the letter, but not in the sense inferred by Manning and Mackintosh.

That no other contract existed than the one alluded to, is clear from the fact that on the 6th September, 1847, Garay still held the privilege of opening the line of communication. Garay did not present the contract he had entered into with Manning and Mackintosh to the Supreme Government until the 18th July, 1848, ten months after the conferences for peace; and in transmitting it to the Foreign Office he says, "that it is the one agreed on between him and the representative of the house of Manning and Mackintosh, with *respect to the lands and colonization* of the Isthmus of Tehuantepec, and *which had already been approved of* by the Supreme Government, &c." This document proves that no other contract existed than the one of colonization, and consequently Government could not grant its sanction to one for opening the line of communication when no such contract existed. Another still more convincing proof exists in the Instrument made between Garay and the representative of Manning, under the date of 28th September, 1848,

which ratifying certain private agreements not known, it is declared, "That he cedes without reserve all the rights &c., "which were granted him in the decrees of 1st March, "1842, and others there cited, for the construction of a "line of communication from one sea to the other, through "the Isthmus of Tehuantepec, &c." This document has been produced by the representative of Manning, and by it, it is seen that a year after the note of the Mexican Commissioners, Garay was still the Proprietor of the privilege for opening the line.

We gather from this, that provided the private agreement of said cession was entered into by both parties on the 10th June, 1847, that good faith had been wanting towards Government on the part of Garay, as he represented himself, on the 18th July, 1848, as still holding the privilege. These contradictions of themselves prove the intrinsic value of such private agreements. We now proceed to the decree of 22nd May last, so strenuously opposed by the house of Manning, under the plea that *the privilege of Garay had not ceased*; and, provided its validity was called in question, that it was solely reserved to the Judicial Power, and not to the Congress to decide it.

The proper reply to this argument, is by proceeding with the history of the business. Seven years had elapsed, and the original projector had not even commenced the works; the conditions had been unfulfilled, and there was every probability that the privilege would be declared void. With this view, Garay had transferred to an English house his rights, with the hope that the power and influence of that Government would be thrown into the scale, whenever the balance should be doubtful. The first notice the Government received of this transfer, was on the 13th January, 1849, through a representation of

the house of Manning and Mackintosh. Without any one having disputed the existence of the privilege, for the reasons above alluded to, he endeavored to prove that he had been occupied on the works, with few interruptions, until the 26th October, 1848, that is to say, within eleven days of the expiration of the prorogation of two years granted by General Salas, by the decree of 5th November, 1845."

To prove this, he encloses a note from the Prefect of Acayucan, to the Governor of Vera Cruz, in which he states that the Engineer, D. Cayetano Moro, had returned to undertake the works, "that although his instructions directed him to commence by opening a provisional road, which should facilitate the communication of the works, and for this object the direction of the river Coat-zacoalcos appeared to be the easiest and least expensive, nevertheless he (the Prefect), had induced Moro to open the road by land, so as to facilitate the communication between the towns of Tehuantepec and Oajaca, and in fact that the Engineer had commenced to make a plan of it."

This was addressed on the 25th November, 1848; and thus, according to the aforesaid representation of Manning and Mackintosh, under date 13th January, 1849, it appears that at that date the works remained in the same state as a year before, as it says, "Mr. Moro is now making plans, and opening the line of communication, and a road indispensable for the introduction and transit of workmen, machinery, &c.; on the conclusion of these indispensable works, and the dwellings of native and foreign families, who will be employed on the works, &c." Thus, if neither the labourers, nor the road by which they must pass, nor the houses in which they were to live, were yet in existence, how is it that the works of the line

of communication were in progress? What, then, were the works carried on? Merely the ordinary ones of opening a waggon-road! This is no conjectural assertion, but borne out by the representative of Manning in his aforesaid note, and confirmed by another of the 18th of the same month of January, in which it is inferred, that even that insignificant work had not been concluded, and that nothing yet had been done respecting the principal one of the grand line of communication through the Isthmus. The note says, "In order to do so, orders have been given to engage all the laborers of the country to finish a waggon road, remove the obstacles for navigating Coatza-coalcos, and clear with machinery the port of San Dionisio. The necessary steps will also be taken to purchase in the United States, waggons and steamers, so that about the middle of next April, the passage through Tehuantepec will be practicable," &c.

Here it is clearly seen, by the confession of the speculators themselves, that in January 1849, that is to say, two months after the expiration of the prorogation, and consequently of the privilege, nothing had been done, except commencing a waggon road for the internal traffic to the towns of Oajaca, and that the interoceanic line of communication was in mere perspective; as yet even the workmen were not engaged, and not a single thing for its accomplishment had been determined on. This certainly was not the object of the concession, nor had a prorogation of nearly five years been granted, from time to time, merely for the sake of securing a short piece of *internal waggon road*. Garay, or his successors, had openly violated the original terms prescribed in the privilege, by deviating from the route laid down; as in the decree of the 9th February, 1843, it was stipulated "that it should be made by the river Coatzacoalcos, according to the surveys

already completed," and it will be seen by the letter of the Prefect of Acayucan, that abandoning this direction, he had taken up another line for the waggon road. With such facts before them, the Government did not hesitate to notify the grantee, on the 8th March of the same year, that they no longer recognized him as possessor of the privilege, on the broad ground that the time had expired, and moreover that the grant was subject to the approval of Congress, to whom it had been referred. The contents of this note were communicated to the Mexican Minister Plenipotentiary in Washington, in order that he might make it known to Garay, who was then in New York, endeavoring to form a company to undertake the enterprise.

The house of Manning, on the 10th of the same month, protested against the decision of any authority whatever, except the Judicial one, and continued until the 25th July, heaping protest on protest; when finally they informed the Government, "that the Company had been definitely established in the United States, and was represented by Mr. Peter Hargous, with whom Government were to understand."

The question raised by the house of Manning, that the contract should be submitted to the Judicial Power seemed absolutely nugatory to Government, as the point at issue, was not whether the privilege had been lost through the nonfulfilment by the contractors of the original stipulations; but that the Government declared the contract void, on account of the illegality of the decree of General Salas of 5th November, 1846, granting the prorogation; that it was illegal in its origin, and not having been subjected, as the law provided, to the revision and approval of Congress. This is stated to shew how unfounded are the pretensions of the grantee, not with a view to avoid

the judicial appeal. The tribunals are open to the appellants, and the Government will there sustain their rights. The Company of New Orleans, claiming all the privileges of the original grantee, assert that they became possessed of them, first, under the confidence which the acts of the Mexican Government inspired; secondly, that the Government had tacitly recognized the transfer to the house of Manning, by having permitted them to send out a scientific commission to survey the Isthmus, and form plans of the line of communication; and lastly, from their rights having been recognized by negotiations on foot for making the Treaty, as before referred to.

The Company then assumed that Congress could not annul the concession made to Garay, and that if that were done they would have a clear right to damages.

The first point, however true in principle, should have induced the company to have informed themselves previously what were the precise conditions under which the Government had granted the privilege; and allowing themselves to be deceived, they have only themselves to blame for their want of caution, and if they have damages to claim, it is not the Government to whom they are to look.

The documents supply abundant data to show that the company had been guilty of hastiness, at least; it acquired the rights by which it claims, by the contract entered into with Mr. Peter A. Hargous. Of this, information was given to the people of New Orleans, at the meeting held on the 18th October, 1850, by the commission named for that purpose on the 5th of the same month of the preceding year, 1849.

The noting of these dates is very important, in order to estimate the validity of the rights assumed.

It has been said, that the representative of Manning did

not inform the Government of the transfer made to him by Garay, until the 13th January, 1849; and it has been seen that Garay continued claiming, as grantee and proprietor, up to the 25th July, when he gave notice of having transferred to Hargous the agency and representation of the business, declining at the same time to show the contract entered into with him, notwithstanding the repeated orders issued to that effect.

By a note from Mr. Daniel Webster to the Mexican Minister, dated Washington, 3rd April, 1851, it is known that the contract was made in February, 1849, but that the cession made by Hargous to the New Orleans Company, was not known to this Government until the end of 1850, from a report published by the commissioner in the Weekly Picayune of the 28th October, of the same year. From this, it is evident there has been a want of frankness and good faith on the part of the representatives of the house of Manning, and of Garay.

It is scarcely credible that in a business of such magnitude, Hargous could have been ignorant of the views of the Government; *first*, because as soon as the house of Manning appeared as the successors of Garay, they immediately disavowed him as such, and published said disavowal in the official gazette, and in other papers in the capital, in February, 1849. *Secondly*, because on the 8th of the following March, Government informed the house of Manning of the expiration of the privilege, sending orders at the same time to the Mexican Minister at Washington, to communicate the same to Garay, then residing at New York. *Thirdly*, because Garay was thus informed, on the 8th April, and answered the Mexican Minister on the 12th of the same month. *Fourthly*, because said resolution was published in the official paper of the 14th March, a few hours before the departure of the packet;

which gave rise to a note from the house of Manning, of the 27th, complaining of the injury it would do their speculation in the United States, where capitalists were more favorably inclined to the communication by Tehuantepec than by Panama, as they judge by letters just received. *Fifthly*, because the aforesaid house informed the Government that they were writing to the parties interested, residing out of the Republic. *Sixthly*, that the Government so far persisted in not recognizing the house as grantee, as to give orders, on the 25th June, that none of their vessels should be admitted into Coatzacoalcas, although the house declared that such proceedings would so dishearten foreign speculators that they would be unwilling to venture their capital in an enterprise so manifestly opposed by the Government. *Lastly*, that the said house, convinced of the inefficacy of their opposition to Government, at length withdrew their claim, stating that for the future the Government must understand with Mr. Peter A. Hargous.

These facts, taken from the original correspondence carried on between the house of Manning and the Government, and the publication of them in most of the papers of the Republic, incontestably prove, that not only was Hargous acquainted with them, but also that they were not unknown to the promoters of the company in New Orleans.

That is to say, that the company were aware, *first*, that the Government had declared the privilege null and void. *Secondly*, that it did not recognise the legitimacy of the transfer of Garay to the house of Manning.

The Government was not then aware of the transfer which the house of Manning had just made to Hargous, if such transfer ever really was made; as every thing concurs to lead us to believe that the houses of Manning and

Hargous have been merely parapets raised by Garay in order to negotiate a privilege which was legally escaping from his hands, either through the respectability of England or of the United States.

If with this knowledge they purchased from Hargous, they have no right whatever; if they were ignorant of it, the fault is theirs; for the legislature of all nations admit, and common sense shews, that ignorance respecting the powers and authority of contracting parties, is not a valid plea, as persons treating should inform themselves of the existence of these necessary preliminary requisites. If this company were deceived, the responsibility falls entirely on those who have deceived them, and not on Mexico, which, much more than the company, has been the victim of proceedings in which her dignity has been outraged.

We repeat, that the company had ample means of undeceiving themselves, and cannot blame Mexico for their own wilful ignorance. Why did not the commission, charged with negotiating with Hargous, demand from him the proofs of the approval of the Mexican Government, to the transfer made to the house of Manning? The commission recognized this requisite, as they allege that the Government had approved of the transfer of Garay to the house of Manning. Though untrue, in fact, it proves by inference the principle we lay down. The company, if deceived, has been deceived wilfully and willingly; and the arguments drawn from an expression in a letter to Mr. Trist, as well as from the isolated fact of a scientific commission having been permitted to make a survey, are excessively vague, and as explained, easy of refutation. Above all, the company knew, or ought to have known, a confirmatory fact which is elicited in the following correspondence with the Minister Plenipoten-

tiary of the United States. When His Excellency informed the Mexican Government, on the 1st December, 1850, of the meeting held in New Orleans for forming the company of Tehuantepec, he represented it as a mere struggle between the northern and southern speculators, got up without any intention of offending either the feeling or trenching on the rights of Mexico. The Minister of Foreign Affairs answered as follows, on the 9th January: "that the privilege not being constitutionally approved, any thing that was done or might be done, or whatever interests were compromised in the undertaking, must be subject to the results of both resolutions." Thus it is evident, that the company acted with this understanding, and consequently an allegation of ignorance falls to the ground. The other plea, that Government sanctioned the undertaking, by permitting the survey of the Isthmus, is equally untenable. What! is it to be assumed, that an act of courtesy and generosity confers or admits a right? The very fact of permission having been requested, and as an act of consideration granted, indirectly proves that the Mexican Government recognized no right whatever in Garay or his successors, otherwise it either would have refused the permission to survey, or at least required the previous consent of Garay. This permission consequently, if it proves anything, is against those who allege it; for the mere act of asking it, recognizes the right of Mexico and their own want of it.

It also refutes the malicious reports set afloat, that the Mexican Government oppose the contract on the ground of their ill-feeling to the citizens of the United States; evidently disproved by this courtesy extended them. What Mexico cannot submit to, is an attempt to force her to relinquish the sovereignty of her own independent legislation on this matter. There is also equal malevo-

lence in stating, that the Mexican Government only questioned the validity of the grant, and its prorogation, when it was aware that it had passed into the hands of American citizens, (the facts we have at length stated in the foregoing pages, fully disprove this).

It is false, because it has been seen that its opposition and disavowal were manifested the moment it knew that it had been ceded to British subjects, and the same conduct would have been observed to any other grantee who had not obtained its previous consent, as it was a national undertaking treated of, and one that required especial confidence in the person conducting it.

There has been put forth, in papers of the Union, another pretension still more destitute of justice; that is, that the Mexican Government is bound to indemnify the company the expenses they have incurred in the survey of the Isthmus.

We reply to this, that the company voluntarily incurred these expenses, and if they have been induced to make outlays, as the successors of Garay, by a transfer unduly made, it is not certainly to the Mexican Government they are to look for reparation. The law of the 1st March, expressly declares, that the grantee is to pay all expenses. The *fourth* article states, "D. José Garay shall cause a survey of the lands to be made, and of the direction to be given to the line of communication at his own expense;" and the *seventh* article, "the Government binds itself to protect and assist the undertaking in its surveys and prosecution of the works, but all the expenses attendant on the same shall be defrayed by the grantee."

Sufficient proof has been given in the foregoing pages, that Garay did not fulfil the stipulations of the original grant, either wholly or in part, particularly that laid

down in the *fourth* article of the decree of 1st March, which prescribes the concluding the plan of the road or the line of communication within the first eighteen months, subject in case of nonfulfillment, to the forfeiture of the privilege. As further we have also seen, by the note from the house of Manning, dated 13th January, 1849, in which he informs the Government that he is making plans for the line of communication; not by canal or railroad, not the great oceanic communication, but simply that his engineer is then occupied, seven years afterwards, in opening a *waggon road* for internal traffic between Vera Cruz and Oajaca.

We need not recapitulate the arguments we have already adduced to prove the cessation of the privilege. We consider that contracts entered into, are equally binding on both sides; and Garay had forfeited his privilege on the broad ground of not having complied with the stipulations on which it was granted, leaving aside its non-ratification by Congress.

In this dilemma he applied to British subjects; and when the British Government would not interest itself in the question, he as a last resource, made a clandestine contract with an American citizen, who, with a full knowledge of the facts as before related, interested a company formed in New Orleans, in the business. In this we see an attempt to found, from a private unsound claim, from a mere question of private individuals, a serious foreign one, and to make a simple question, one of grave and diplomatic importance.

Let us examine, for the sake of argument, the position of the company, in the most favorable point of view for them. Let us suppose that they are really entitled to the privilege conferred on Garay, transferred to Manning, and now theirs; it certainly will be allowed that thus they can

only enjoy it with its original conditions annexed. Well, amongst these conditions, accepted by them, and inserted in the Public Instrument of 26th July, 1847, and 13th article of 5th November, 1846, is *an absolute renunciation of Nationality and Foreign Protection*. The latter law provides in said article, "that it shall be an express condition in the contract, that the Colonists are to renounce their Nationality, during their residence in the country, and subject themselves to the rules of colonization, in so far as they are not opposed to this law." The regulations alluded to, are to be found in the 5th and 6th articles of the law of the 11th March, 1842, which says, "Foreigners acquiring property (in Mexico,) are, with respect to it, subject to the existing laws in force in the Republic, as concerns transfer, enjoyment of it, payment of imports, without alleging any rights as foreigners; consequently, all questions that may arise, shall be decided by the common law of the country, excluding all other intervention whatsoever." Although the Government had no doubt on this interpretation, they demanded, and the contractors consented, that it should be so expressed in their contract; that not only should the Colonists, but that the Proprietors should be subject to it, in the most clear, express and decisive manner, so that whatever circumstances might occur, they should be unable to allege the rights of foreigners, or any other than those granted by the common law of the country. It was added, in order to avoid future questions and misunderstandings, that Garay did not transfer to the house of Manning and Mackintosh, or Schneider, in virtue of the contract whose approval was solicited, any more rights or shares than he had acquired by the law on the matter, and that said individuals could not acquire any others than those originally granted. With this explicit and solemn treaty before our eyes, it is evident that admitting

the foregoing suppositions, the company have no right to implore the protection of their Government, nor could their Government grant it them; as in accepting the privilege, they accept the primary condition of renouncing their nationality, and their claims to foreign protection. Thus, under whatever phase we consider the question, diplomatic intervention cannot be admitted, nor can two friendly governments be dragged into a painful discussion, or be placed in collision, merely to serve the venal ends of private speculators.

We speak thus, supposing all parties aware of the true state of the case; but if the company of New Orleans has really been deceived, that has been no fault of the Government of Mexico; on them they have no claim of redress, nor indeed of complaint; the acts of the Government have been open, explicit and public.

Mexico is Sovereign of its own territory, and the Government of the Republic the only legitimate channel through which it can be alienated. Mexico has no odium against any nation, nor against any class of citizens on the civilized globe; her ports are open to the world, she has no objection to her territory becoming the highway of nations; but she cannot submit to dictation, her sovereignty and her dominion disposed of. She openly avows her desire to offer her territory for common transit to those that may require it; but that territory will be granted not as a right, but as a boon. But she will grant this privilege on no mean and petty scale; all the nations of the civilized globe are invited to partake of its advantages, and she will guarantee every security to property and life, and every advantage which her own safety and independence will admit.

This is the pledge held out by the Government of the Republic, in the negotiation of the treaty now pending with the United States; and full protection will be afforded to whoever may seek it, and is willing to submit to her laws and authority, without distinction of race or nation.

FINIS.





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